IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision: 28.11.2006

State of Punjab Vs . Nand Singh and another

CORAM: **Hon'ble Mr. Justice Virender Singh**
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. K.S. Boparai, Addl. Advocate General, Punjab,
for the appellant

Virender Singh, J.

State of Punjab has preferred the instant appeal against the acquittal of Nand Singh and Subhash Chander respondents, who have since been acquitted vide impugned judgment of learned Special Judge, Ferozepur dated 2.3.2006 in case FIR No.83 dated 26.12.2003, under Sections 7, 13 (2) and 12 of Prevention of Corruption Act, 1988. An application bearing Crl. Misc. No.427-MA of 2006, under Section 378 (3) of the Code of Criminal Procedure for grant of leave to appeal has also been filed.

In brief, the case of the prosecution is that on 26.12.2003, Karnail Singh son of Bagh Singh got recorded his statement with DSP Surjit Singh to the effect that he was owner of 3 ½ acres of land and for irrigating the land new Warabandi was to be fixed and the same was to be continued by respondent Nand Singh Patwari who after fixing the

Warabandi had given a slip of tenures of 24 minutes. It is then alleged that the complainant thereafter requested respondent Nand Singh to increase the tenure for which he demanded Rs.1500/-. A sum of Rs.800/- was given to him on 21.12.2003 whereas the balance amount of Rs.700/- was to be paid on 26.12.2003. Nand Singh had assured him that after the receipt of money, tenure of Warabandi would be increased from 24 minutes to 27 minutes. Since the complainant was not willing to give Rs.700/- to Nand Singh, he made a complaint. It is then the case of the prosecution that the appellant Nand Singh was apprehended by the raiding party and he was apprehended while sitting in his chair. He disclosed to DSP Surjit Singh that the money was not with him and he had given the same to one Subhash Chander. Thereafter, Subhash Chander respondent was produced before DSP and tainted currency notes of Rs.700/- were recovered from his possession. All other formalities were completed at the spot. After the completion of the investigation, both the respondents were charged under Sections 7, 13 (2) and 12 of the Prevention of Corruption Act. After examining the entire evidence, they have now earned acquittal.

We have heard Mr. Boparai, learned Addl. Advocate General, Punjab and with his assistance gone through the impugned judgment very minutely.

The conceded position is that the complainant and the shadow witnesses have not supported the case of the prosecution and,

therefore, the view taken by the learned trial Court is that demand and acceptance of the bribe are not proved and mere recovery of money from one of the accused i.e. Subhash Chander, even if is believed, would not be sufficient to hold them guilty for the charges framed against them.

Once the star witnesses have not supported the case of the prosecution, the necessary ingredients of demand and acceptance are not proved. Therefore, in our considered view, the presumption against the accused as envisaged under the Act is weakened and the accused is not supposed to rebut the presumption with the same standard of proof as required by the prosecution for recording the finding of conviction. The mere fact that money was recovered from one of the respondents, in our view, cannot form the basis of conviction.

Finding no perversity in the impugned judgment of acquittal, we hereby decline to grant leave to appeal and dismiss Criminal Misc. No.427-MA of 2006.

(Virender Singh)
Judge

(A.N. Jindal),
Judge

November 28, 2006
'rana'